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ENVIRONMENTAL PROTECTION

Delaware Attorney General Joseph R. Biden III
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Nevada
Environmental Protection
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BAPC / BAQP

VIA FACSIMILE & U.S. MAIL

Nevada Division of Environmental Protection
Attn: Francisco Vega
Bureau of Air Pollution Control
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701-5249

RE: Ely Energy Center Draft Permit

Dear Mr. Vega:

The Attorneys General of the States of Delaware, Maine and New York jointly submit these comments to the Nevada Division of Environmental Protection (NDEP) to voice concerns regarding the proposed issuance of an air quality permit to Sierra Pacific Resources Company (Sierra Pacific) for the construction of a coal-fired power plant near the town of Ely, White Pine County, Nevada. As explained below, we urge NDEP not to issue a permit for the proposed Ely Energy Center Generating Station unless Sierra Pacific designs and sites the plant in a way that minimizes the generation of carbon dioxide (CO_2) emissions and/or allows for the capture and secure sequestration of such emissions.

Climate change is the single greatest environmental challenge facing the world today. Although climate change is a global problem, effective action at the national, regional, and state level is needed to achieve the necessary reductions in CO_2 emissions. Scientists overwhelmingly agree that the global community must reduce emission of greenhouse gases, including CO_2, to well below 1990 levels within a few decades if we are to stabilize the climate at an acceptable level. And, according to the experts, taking action to reduce greenhouse gas emissions is needed immediately. As the chairman of the United Nations Intergovernmental Panel on Climate Change recently declared: "If there's no action before 2012, that's too late. What we do in the next two to three years will determine our future."

To that end, many states have made the reduction of CO_2 emissions a priority. For example, ten northeastern states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont) participate in the Regional Greenhouse Gas Initiative (RGGI), a mandatory cap-and-trade program to reduce CO_2 emissions from power plants, which collectively represent a

major contributor to global warming. By 2019, the RGGI states will achieve a 10% reduction in CO_2 emissions, with a cumulative reduction below baseline of roughly 50 million tons. Similarly, California passed the Global Warming Solutions Act, AB 32, in 2006, which requires the state's utilities, oil refiners, cement makers, and other large industrial greenhouse gas emitters to reduce their CO_2 emissions to 1990 levels by 2020. California also enacted in 2006 California Public Utilities Code, section 8340 et seq., which precludes California utilities from entering contracts for electricity from high-emitting sources of CO_2, both inside and outside of California. Other states are considering or have adopted similar power plant performance standards.

Arizona, Montana, New Mexico, Oregon, Utah, and Washington have joined California as members in the Western Climate Initiative. Nevada has agreed to be an observer of the program. Under this agreement, member states will reduce emissions by 15% below 2005 levels by 2020. Further, six Midwestern states just signed the Midwestern Regional Greenhouse Gas Reduction Accord committing to a regional cap-and-trade program for CO_2. Along with the states participating in RGGI and the Western Climate Initiative, this new Midwestern accord brings the number of states committed to regional trading systems to 23.

In contrast to these efforts, the proposed Ely Energy Center plant would substantially increase CO_2 emissions from Nevada sources. As proposed, the new 1,500 MW coal-fired plant would utilize traditional coal-burning technology, which emits massive amounts of CO_2. The proposed plant is projected to emit more than 14 million tons of CO_2 per year, thereby seriously undermining the concerted efforts being undertaken by multiple states to address global warming. For instance, over the RGGI time frame, cumulative emissions from this plant would be more than 140 million tons CO_2, more than canceling the reductions relative to baseline resulting from RGGI. In fact, emissions from just one of the two proposed boilers would more than cancel the RGGI reductions. With a lifetime of more than 50 years, this plant, if built as proposed, might well emit more than 700 million tons of CO_2 in total, thus significantly contributing to the public health and environmental damage associated with global warming.

We encourage you to explore alternatives that will allow Nevada to satisfy its need for energy without exacerbating global warming. As an initial matter, implementation of energy conservation measures and construction of additional non-polluting renewable energy sources could reduce, or even obviate, the need for new coal-fired power in Nevada. As Governor Gibbons recently recognized in his Executive Order establishing the Nevada Climate Change Committee, Nevada has an abundance of renewable energy resources. A recent report by McKinsey & Co. concluded that improved energy efficiency in buildings, appliances and industrial plants could offset about 85% of projected increase in demand for U.S. electricity in 2030, obviating the need to build 150 or so new coal plants - such as the Ely plant - now on the drawing

boards in response to projected demand. McKinsey & Co., *Reducing U.S. Greenhouse Gas Emissions: How Much at What Cost?*, at xv, 30, & Ex. 18. (Dec. 2007).

If a new power plant is still needed, we urge the state to consider fueling such plant with biomass or natural gas, or both, and to consider siting so as to allow for full-scale carbon capture and sequestration (CCS). Biomass and natural gas not only emit a fraction of the CO_2 compared to coal, and eliminate emissions of pollutants such as mercury, and other heavy metals, they also improve the efficiency of the production process, further reducing CO_2 emissions. In addition, we urge you to consider Integrated Gasification Combined Cycle (IGCC) technology, an established and available production process with lower emissions than pulverized coal. In general, retrofitting an IGCC plant to capture CO_2 emissions likely will be less expensive than retrofitting a pulverized coal plant. Finally, we ask that you consider requiring Sierra Pacific to offset CO_2 emissions as a permit condition.

Further, state and federal laws require issuance of a Prevention of Significant Deterioration (PSD) air quality permit by NDEP to Sierra Pacific prior to construction of the Ely Energy Center plant. To obtain a PSD permit, Sierra Pacific must demonstrate that the proposed Ely project complies with the best available control technology (BACT). The BACT standard requires PSD applicants to consider other "production processes or available methods, systems, and techniques" including "innovative fuel combustion techniques" to achieve the "maximum degree of reduction for each pollutant subject to regulation" under the Clean Air Act (CAA). The BACT standard in the CAA also requires consideration of "clean fuels." This plain language and the legislative history of the CAA make clear that Congress intended that the full range of cleaner fuels, including biomass and natural gas, and production methodologies, including coal gasification, would be considered in a BACT analysis. *See, e.g.*, 123 Cong. Rec. 18472 (1977) (Senator Walter Huddleston of Kentucky explaining that the term "innovative fuel combustion techniques" was added to the definition of BACT to clarify that BACT was "intended to include such technologies as low BTU gasification"). Thus, a BACT analysis for the Ely project must consider biomass and natural gas, as well as IGCC technology, a form of coal gasification.

The PSD permit for the Ely Energy Center plant should include a BACT emission limit for CO_2. A BACT emission limit is required "for each pollutant subject to regulation under [the Act]." 42 U.S.C. § 7475(a)(4); *see* 40 C.F.R. § 52.21(b)(50)(iv). The Supreme Court held in *Massachusetts v. EPA*, 127 S.Ct. 1438, 1460 (2007) that CO_2 and other greenhouse gases are "pollutants" under the CAA. Not only does EPA have the authority to regulate CO_2 under the CAA, it must do so if it concludes that CO_2 from power plants and other sources "may reasonably be anticipated to endanger the public health and welfare." Overwhelming scientific evidence compels this conclusion. Given that the Ely plant will be a major emitter of CO_2, NDEP should require Sierra Pacific to demonstrate that the proposed technology for the plant is the best available control

technology for CO_2 emissions. A full BACT analysis would inevitably lead to the conclusion that the Ely proposal includes inadequate controls on CO_2 emissions.

Furthermore, NDEP must consider the "energy, environmental, and economic impacts" of each unit as part of the BACT analysis. This analysis extends to the overall environmental impacts of the units. *See, e.g., In re North Country Resource Recovery Associates*, 2 E.A.D. 229, 230, 1986 EPA App. LEXIS 14 (Adm'r 1986). The detrimental environmental effects of the increased CO_2 emissions resulting from the proposed new plant must be considered under the "environmental impacts" prong of BACT, which in turn informs the selection of control technology.

We recognize the need for additional sources of energy, but urge NDEP to fully consider whether efficiency improvements or non-polluting sources of electricity can meet increased demand for the next several years. If increased electricity-generating capacity beyond these options is nonetheless needed, we urge NDEP to work with Sierra Pacific to require that the plant be constructed so as to minimize and offset CO_2 emissions and sited so as to allow for CCS.

We thank you for considering our view on this important matter.

Sincerely,

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